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Article 4: Bank Deposits and Collections

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show that she had signed in a representative capacity, considering the pleadings of both parties together, the contrary was established between the parties.

COMMENT

Section 3-403(2) of the 1953 Official Version of the Code did not allow the maker of a note the use of parol evidence to prove the capacity in which he had signed a note. The 1958 and 1962 Official Versions removed this prohibition and allows such proof.

It should be noted that had the plaintiff not been the payee, but rather a holder in due course, Mrs. Dasey would not have prevailed since the defense of her signing in a representative capacity would not have been available under Section 3-305.

R.W.D.

ARTICLE 4: BANK DEPOSITS AND COLLECTIONS

SECTION 4-406. Customer's Duty to Discover and Report Unauthorized Signature or Alteration

(4) Without regard to care or lack of care of either the customer or the bank a customer who does not within one year from the time the statement and items are made available to the customer (subsection (1)) discover and report his unauthorized signature or any alteration on the face or back of the item or does not within three years from that time discover and report any unauthorized indorsement is precluded from asserting against the bank such unauthorized signature or indorsement or such alteration.

ANNOTATION

*INDEMNITY INS. CO. OF NORTH AMERICA V. FULTON NAT'L BANK
— Ga. App. —, 133 S.E.2d 43 (1963)

Defendant banks paid checks of drawer, plaintiff's assignor, bearing forged indorsements. Approximately two months after the last check bearing a forgery was paid, the drawer notified the banks that there were "some irregularities" concerning the genuineness of indorsements of checks in their accounts. One year and a half after the last forged checks had been cashed, the drawer sent a detailed notice to the banks together with photostats of the checks with forged indorsements. In affirming the lower court's sustaining of the banks' demurrer, the court held that the first notice was not sufficient since the identity and circumstances of payments were not given. The last notice was sufficient but it was not given within the one year limitation provided by statute and therefore ineffective. The court added in a footnote that the applicable but not then effective UCC Section 4-406(4) modifies

* Code constructed but did not govern the case.

the state statute somewhat "but carries forward the one-year limitation" in which notice must be given.

COMMENT

Georgia modified the Official Version of Section 4-406(4) by changing the time limit within which notice of a forged indorsement must be given to the bank by a customer. The limits contained in Section 4-406(4) of the Official Version run from the time the statements containing the forged or altered checks are made available to the customer. It should be noted that the Official Version specifically distinguishes between the length of time notice to a bank must be given under Section 4-406(4) for the customer to be able to assert a claim for payment of an item with a forged indorsement (three years) and one with his unauthorized signature or alteration of the instrument (one year).

R.W.D.

ARTICLE 7: WAREHOUSE RECEIPTS, BILLS OF LADING AND OTHER DOCUMENTS OF TITLE

SECTION 7-204. Duty of Care; Contractual Limitation of Warehouseman's Liability

(1) A warehouseman is liable for damages for loss of or injury to the goods caused by his failure to exercise such care in regard to them as a reasonably careful man would exercise under like circumstances but unless otherwise agreed he is not liable for damages which could not have been avoided by the exercise of such care.

(2) Damages may be limited by a term in the warehouse receipt or storage agreement limiting the amount of liability in case of loss or damage, and setting forth a specific liability per article or item, or value per unit of weight, beyond which the warehouseman shall not be liable; provided, however, that such liability may on written request of the bailor at the time of signing such storage agreement or within a reasonable time after receipt of the warehouse receipt be increased on part or all of the goods thereunder, in which event increased rates may be charged based on such increased valuation, but that no such increase shall be permitted contrary to a lawful limitation of liability contained in the warehouseman's tariff, if any. No such limitation is effective with respect to the warehouseman's liability for conversion to his own use.

ANNOTATION

**WORLD PRODS., INC. V. FREIGHT SERVICE, INC.*
222 F. Supp. 849 (D.N.J. 1963)

Plaintiff's goods were damaged beyond use while stored in the defendant's warehouse when a severe hurricane caused unusually high tides. The portion

* Code constructed but did not govern the case.